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IN THE HIGH COURT OF CHHATISGARH AT BILASPUR (CG).

Writ Petition No. 43 /2000

Petitioner :: Dinesh Kumar Upadhyaya, aged about 36 years, son of late Shri Kedarnath Upadhyaya, Divisional Forest Officer (I.F.S.) Mahanadi Production Division Raipur, District Raipur (CG).

Versus

Respondents ::1. The Union of India, Through the Secretary, Ministry of Environment and Forest Paryavaran Bhawan, C.G.O. Complex Lodhi Road, New Delhi.

2. The State of Chhatisgarh, Through the Secretary, Government of Chhatisgarh, Department of Forest, D.K.Bhawan, Raipur (CG).

3. The State of Tripura, Through the Secretary, Appointment and Services Deptt. Agartala (Tripura).

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WRIT PETITION UNDER ARTICLE 226/OF THE CONSTITUTION OF INDIA :

1 : Particulars of the petitioner :

As given in the cause title.

2 : Particulars of the respondents :

As given in the cause title.

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DIVISION BENCH : HON.THE CHIEF JUSTICE AND
HON. JUSTICE FAKHARUDDIN, J.J.

WRIT PETITION NO. 43/2000

Dinesh Kumar Upadhyaya Vs. Union of India and ors.

O R D E R

(25.6.2001)

It is submitted that the petitioner was allotted Manipur - Tripura cadre vide order dated 12.6.89. Certain incidents of terrorism occurred and petitioner thereafter applied for change of the cadre. Though Tripura - Madhya Pradesh agreed for changing the cadre but the same was not permitted by the Central Govt. The petitioner had filed writ petition in the High Court of M.P. bearing no. WP 6165/98 which was dismissed by the High Court of M.P. on 22.1.99. The Order passed by the High Court of M.P. while dismissing the petition is as under :-

> " The petitioner by this writ petition has challenged the order of the Govt. of India dated 11.11.98 (annexure P-21) whereby the government of India has declined to acceede to the request of the petitioner for change of his cadre from Tripura to M.P. The petitioner hails from Madhya Pradesh. He is an Indian Forest Officer. Both the States i.e. Tripura and Madhya Pradesh had agreed to change of cadre of the officer and requested the government of India to permit the change of cadre under the rule 5 (2) of the Indian Forest Service (cadre) Rules,1966. It is apparent that the incumbent has fallen victim of a terrorist attack,therefore,on humanitarion aground both the states forwarded the appli- cation of the petitioner for change of his cadre to the Government of India but the

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government of India has declined to accept the same. It is a matter of policy of the Government of India. It is for the Government of India to consider whether his cadre should be changed from Tripura to Madhya Pradesh or not. He may make a further representation to the Government of India. We are not inclined to interfere in the petition. The writ petition is dismissed accordingly."

2. Petitioner thereafter submitted a representation. The said representation was decided and the communication was given to the petitioner on 17.8.2000.(Annexure P-13). Petitioner thereafter approached the Central Administrative Tribunal by filing O.A. 876/2000. Learned Member of the Tribunal after quoting the decision of the Division Bench of High Court of M.P. and considered the material available on record held that since the matter is within the policy of the government, rejected petition by passing impugned order annexure P-4.

3. Learned counsel for the petitioner submitted that the order passed by the Tribunal is illegal and contrary to law. On the other hand learned counsel for the Union of India submitted that the impugned order is just and proper and can not be interfered with in the petition. Counsel for the Union of India has placed reliance on the decision of the Supreme Court, in the matter of Union of India and others Vs. Rajiv Yadav and others, 1994 (6) SCC 38. where Hon'ble the Supreme Court held as under :-

" We may examine the question from another angle. A selected candidate has a right to be considered for appointment to the IAS but he has no such right to be allocated to a cadre of his choice or to his home State. Allotment of cadre is an incidence of service. A member of an All India Service bears liability to serve

in any part of India. The principles of allocation as contained in clause (2) of the letter dt. 31.5.95, wherein preference is given to a Scheduled caste/ Scheduled tribe candidate for allocation to his home State, do not provide for reservation of appointments or posts and as such the question of testing the said principles on the anvil of article 16 (4) of the Consititution of does not arise."

4. It is further submitted that the petitioner has already completed the five years deputation period which has expired ~~long back~~ on 23-6-2001.

5. Having considered the facts and circumstances of the case and in view of the order passed by the High Court of M.P. dismissing the petition on the ground that the matter comes within the perview ofthe government and also in view of the decision of the supreme Court in the matter of Union of India and others (supra) we are of the considered opinion that there is no infirmity in the order impugned and as such the petition fails and is accordingly dismissed.

Sd/-
Chief Justice

Sd/-
Fakhruddin
Judge